FOR MYSORE STATE

M. H-87—100,000—21-5-48.

Finance (1948) Department.

Ms SERIES.

G.O. No. 772

Dated 6-8-48

[Despatch Abstract.]

Income tax - Questionnaire of the Income-Tax Investigation Commission - Replied to Paper Received.

(1)

OFFICE OF THE
INCOME-TAX INVESTIGATION COMMISSION,
MINISTRY OF FINANCE (REVENUE DIVISION)

New Delhi, the 29th May 1948.

To

The Secretary to the Government of Madras
(Public) Political Department,
MADRAS.

Sir,

A part of the duty assigned to the Commission under section 3 of the Taxation of Income (Investigation Commission) Act, 1947, is to investigate and report to the Central Government on all matters relating to taxation on income, with particular reference to the extent to which the existing law relating to and procedure for assessment and collection of such taxation is adequate to prevent the evasion thereof. Although the words "on all matters relating to the taxation of income" would seem to suggest a very wide scope for the enquiry, the Commission read them in the light of the preamble to the Act which refers to "the purpose of ascertaining whether the actual incidence of taxation on income is and has been in recent years in accordance with the provisions of law." They are therefore principally concerned with topics of legal avoidance, evasion and the causes which lead to the tax not being levied or collected through defective machinery of the department. The Commission have therefore prepared a questionnaire, a copy of which is enclosed herewith, and they will be grateful to have your views on the points mentioned in the questionnaire.

The Commission will be glad if the views are communicated so as to reach this office on or before the 31st July 1948.

Yours truly,

H.S.RAMASWAMI,
Secretary,

(BY order of the Commission).

QUESTIONNAIRE

(Except when otherwise stated, the sections referred to in the questionnaire are the sections of of the Indian Income Tax Act.)

I. RESIDENTS AND NON-RESIDENTS.

1. Is it necessary or justifiable to retain in the statute the special group of provisions relating to the category described as "Not ordinarily resident"?

2. Under the existing law, a non-resident is not liable to pay tax on profits brought into or remitted to British India during the particular year in which he claims the status of a non-resident, although in preceding years he might have been a resident and he may resume the status of a resident in the very next year after he has brought his foreign earnings into the country. To meet such a case, would you approve of the introduction of a category of "ordinarily resident" defined in positive terms analogous to the provisions suggested by the English Codification Committee with regard to persons styled as "principally resident" or would you suggest that even non-residents should be declared as assessable in respect of profits brought in to or remitted to British India?

3. What suggestion would you make to improve the means available to the Income tax Department for ascertaining the total income in the case of non-residents?

4. The Act makes no express provision in respect of cases where a non-resident has businesses or business connections through more than one person in different parts of India. It may be open to question whether any one of such persons can be treated as assessee in respect of profits made in the business carried on by or though another such person in another part of the country. There can be no doubt that the non-resident himself can be assessed on the aggregate of profits made in all the places. Will it not therefore be desirable to provide that for convenience of realisation, the Income tax authorities can treat any one of these persons as the assessee (under sections 42and 43) in respect of the profits made by or through all the agents of the non-resident? If this view is adopted, provision will also have to be made for retainer of the nedessary sum by the agent so selected.

II. HINDU UNDIVIDED FAMILIES.

5. What changes would suggest in the law relating to the assessment of the income of a Hindu undivided family to income tax? Would you make any difference between a family governed by the Dayabhag law and a family governed by the law of the Mitakshara? Would you suggest any modification with reference to the test laid down in the Act for determining the residence of the Kara which may change from time to time and may not always have a relation to the situs of the family properties?

— a Hindu undivided family in so far as it is linked up with the residence of

III. COMPANIES AND FIRMS.

6. Do you think that the provision made in section 4A(iv) (c) declaring a foreign company (that is a company having its head office outside India) to be resident in British India in respect of any particular year, if its income arising in British India during that year exceeds its income arising without British India, requires any modification, as it may

result in bringing into account in Indian taxation losses sustained by the foreign company abroad? Do you think that the situation could be met by a provision as to the manner or circumstances in which the foreign losses of such a company should be dealt with for the purpose of India taxation, or would you suggest any other change in the Act so far as it relates to taxation of foreign companies?

7. A complaint has been made that firms avoid super-tax by converting themselves into Companies, particularly private limited companies. Are you in favour of the imposition of a graduated super tax properly so called on companies in place of the existing Corporation Tax which is only a flat rate but which is not subject to any minimum? If the answer is in the affirmative do you think that a shareholder to whom a company pays dividends should be entitled to the same treatment in respect of super tax as he receives with regard to income tax under section 49 B?

8. Do you think it necessary or expedient totreat private limited companies as incorporated bodies for the purpose of income-tax assessment, or would you prefer to see them assimilated to partnerships which in substance they are? If the existing provisions relating to private limited companies are to be retained, have you any modifications to suggest either in the definition of such companies for the purpose of the Income-tax Act or in any other respect?

9. Is it not desirable to check the practice of converting each venture of practically the same set of persons into a separate private company merely with a view to escape higher rates of taxation? If so, what will be the best method of doing it? Similarly, how is it possible to checkmate the practice of creating nominal intermediate concerns or taking or introducing nominal partners frequently minors, women and dependents for the same purpose? Would it not be desirable to have provisions in the Income-tax Act Similar to sections 10 and 10A of the Excess Profits Tax Act?

10. What steps can you suggest to prevent <u>ex post</u> facto creation of evidence in favour of an earlier partnership to escape higher rates of taxation in respect of periods when large profits had been made? Do you think it desirable to enact in this country a provision similar to that in England under the "Registration of Business Names Act", compelling the proprietors of business to register the names of their businesses, the persons interested therein, the place or places where they are carried on, within a specified period after the commencement of the business? The provisions of the Indian Partnership Act relating to registration have not achieved the purpose which it was hoped they might achieve. Section 26 of the Income-tax Act leaves the matter to the option of the assessee and registration may take place long after the commencement of the alleged partnership. Compulsory registration will obviate a great deal of uncertainty and unnecessary enquiries as to the true ownership of the business both in the interest of the public and for the purposes of taxation.

IV MUTUAL ASSOCIATIONS.

11. Would you recommend any change in the law relating to mutual associations making profit out of commercial activities?

V COLLECTION AND INFORMATION AT SOURCE.

12. Is there any scope for extending the provisions of the Act relating to (a) deduction of tax at source, and (b) furnishing of information as to payments of rents, etc by the person paying?

13. Would you recommend the insertion in the Act of a provision obliging companies to deduct super tax from dividends payable to all non-resident shareholders even when the amount of divided is below the maximum amount not chargeable to super tax? The total world income of a non-resident shareholder may well exceed the maximum amount not chargeable to super tax or he may draw dividends from more than one company and the aggregate of such dividends even in India itself may exceed such maximum. If you are in favour of such a provision what do you think should be the rate for the levy?

VI. ADVANCE PAYMENT (INTEREST ON)

14. Isthere any justification for differentiating between cases falling under section 18 and cases falling under section 18A by allowing interest on advance payment only in respect of the latter, pre-payment or pre-collection being matter of convenience in both classes of cases?

VII. COMPUTATION OF INCOME.

15. Can the provisions of section 10(4) which are limited to firms, be extended <u>mutatis</u> mutandis to private limited companies and associations generally?

16. Have you any objection to the introduction of a provision on the lines of section 108 of the Australian Act declaring that any distribution out of income by way of advances or loans made by a private company to its shareholders shall be treated as dividend?

VIII DEDUCTIONS AND ALLOWANCES.

17. In view of the provisions of section 14, sub-clause (2) (c), excluding from income tax income, profits or gains accruing or arising with an Indian State (unless received or brought into British India), should not proviso 1 to section 24 be so worded as to make it clear that losses sustained inan Indian State should not be taken into account so as to reduce the taxable amount of profits actually made within the Indian Union during the same period, except in so far as the profits made or losses incurred in the Indian States may be relevant to the determination of the rate of tax which will depend upon the total world income?

18. Would it be possible to meet the complaint of the public that Income tax Officers are taking an unduly narrow view in accepting as expenses incurred for business purposes only a small proportion of the sums proved to have been spent in the maintenance of motor cars, giving entertainments and other attractions for the benefit of customers?

19. What steps should be taken to checkmate attempts to show items the capital expenditure on plant, machinery and buildings as no more than cost of ordinary repairs and maintenance?

20. Could not section 10 (2) (iii) be so worded as to make

it clear that the interest paid on capital borrowed for business can be regarded as an admissible deduction only so long as and to the extent to which the amount borrowed is used for business? The mere fact of initial borrowing for business cannot be the test independently of how the amount borrowed is subsequently used.

21. Section 10 (2) (vi) provides generally for depreciation allowance in respect of machinery, etc. A question has arisen as to whether full allowance for the year or only proportionate allowance should be given in cases in which-

(a) the machinery is not worked for the whole year, or

(b) the assessee is not the owner of the machinery for the whole year. Should not a provision for proportionate allowance only be made to meet such cases?

IX STOCK VALUATION.

22. Will it not be expedient to empower the Central Board of Revenue to provide by rules the methods by which and the principles according to which stock valuation should bemade for arriving at profits for the purpose of taxation?

X USUFRUCTUARY MORTGAGES.

23. Will it not be desirable to make a specific provision in the stature itself as to the manner in which income derived by a mortgagee in possession of agricultural land should be dealt with for income tax purposes? If so, on what lines do you think such legislation should proceed having regard to the possible varieties of arrangements under which the mortgagee may be in possession?

XI PREMIUM ON LEASES.

24. In view of the growing practice of receiving premia - by whatever name called in connection with leases, would it not be right to provide in the Act itself that such premia should be treated as taxable income either in the year of receipt or by distributing the same over the period of the lease? (Compare Sections 83 and 84 of the Australian Act and the English decision in Abbot vs Davies, 11 T.C. 575).

XII. UNCLAIMED BALANCES.

25. What do you think of a proposal that unclaimed and waived surpluses to the credit of customers, suppliers and employers to the extent they are made up of deductions or allowances previously allowed as admissible expenditure for the purpose of assessably income, but not fully expended or paid in actual fact for over three years, should be deemed as profits on the analogy of the proviso to Section 10 (2) (11) in respect of debts previously written off partially or wholly.

XIII SUPERANNUATION FUNDS.

26. Have you any suggestions to make on a proposal to place the law relating to Superannuation Funds (Chapter IX (B) of the Income Tax Act) on a footing similar to that in respect of Provident Funds so as to secure -

to report to the Income-tax Department at the end of each year the names of the persons or concerns whose accounts they have audited during the year? It has been suggested that the fact of audit is often concealed by some assessees to enable them to conceal from the Income tax authorities the result of the audit if the audit happens to show large profits.

XVII BEST JUDGMENT ASSESSMENT.

32. How do you suggest the Income Tax Officers should proceed where they find that accounts have been suppressed or that the accounts produced are not complete and they are driven to make a best judgment assessment? On what basis should such assessments be made? What in your opinion should be the scope of an appeal against a best judgment assessment?

XVIII AVOIDANCE AND EVASION.

33. What changes would you make in proviso 1 to section 43 to ensure that a non-resident broker is a genuine broker and not an alias for the foreign merchant.

34. In what manner can the provisions of section 16(1) (c) and subsection (3) be amplified so as to hit at devices similar in principle but different in form from those specifically mentioned in the section? A question has arisen particularly with reference to transfers in favour of grand children, nephews, illegitimate children, etc., and also in respect of shares in companies held in or transferred to joint names of husband and wife.

35. Would it not be right to provide that, when the income from the transferred property is assessed as if it were the income in the hands of the transferror, the tax thus assessed shall be recoverable also from the property so transferred?

36. If blank transfers of shares and securities are permitted to continue, what safeguards would you suggest to prevent that practice being utilised to defraud public revenue (1) by concealing the identity of the person who received dividends or interest (2) by concealing profits made in share dealings, and (3) by claiming genuine or fictitious losses while concealing profits?

37 Even if the transfer is not in blank, is it necessary or desirable to make a specific provision in the Act as to the person whom the Income tax authorities should take note of as the owner of the share during the interval between the date of the transfer and the date of its registration in the books of the company?

37. What measures would you suggest to prevent avoidance of taxation where an employer instead of paying full remuneration as salary pays part of it by giving various benefits such as conveyance allowance, medical allowance, schooling allowance, reduced rent, free food etc all these benefits being not taxable under the law as it stands?

XIX PERSONS LEAVING THE COUNTRY.

38. What provisions would you recommend to safeguard against loss of revenue on account of assessees leaving India for good without leaving assets? Would you make any difference in this connection between cases where the person concerned leaves India before completion of assessment and cases where he leaves India

(i) that the aggregate of the annual accretion to the Superannuation Fund of an employee including his own contribution but exclusive of interest, together with similar accretions to his recognised Provident Fund, if any, shall not exceed in any year 25 per cent of his salary proper;

(ii) that the limit for exemption from income tax as laid down in section 58(F) shall apply to the aggregate contributions to the approved Superannuation Fund and the recognised Provident Fund of each employee. Similarly, the limit of exemptions on interest as laid down in Section 58 (F) shall apply to the aggregate of the interest on the Provident Fund and the Superannuation Fund.

(iii) that the annual accretion to the Superannuation Fund shall, like the accretion to a recognised Provident Fund, be deemed to have been received by the employee and shall be included in his total income under the head 'Salary' subject to the exemption from Income-tax but not from Super tax.

XIV. SUPER TAX.

27. Will it not be right to extend the principle underlying section 17, sub-section (2), to super tax also, as otherwise persons who are members of unregistered firms or associations may escape payment of legitimate super-tax merely on payment of some super tax in the name of the firm (Vide second proviso to section 55)? Section 23 (5) (b) may not prove to be a sufficient safeguard and it has no application to associations.

XV. SUBMISSION OF RETURN.

28. What ways can be devised to compel a man who has been successfully escaping the attentions of the Income tax authorities to submit a return of his income or to declare by a sworn statement that his income was below the taxable limit? Under the present practice the burden lies on the Income tax authorities to find out whether a man has taxable income or not before issuing a notice to him under section 22(2), and in this waymany people escape taxation altogether. Failure to make a return in persuance of a general order under section 22 (1) is not an offence under the Income tax Act

XVI ACCOUNTS (KEEPING AND PRODUCTION)

29. Is it not time to provide in the statute itself as in Australia and in some other countries that every person carrying onbusiness should keep sufficient records of his income and expenditure to enable his assessable income and allowances to be readily and truly ascertained?

30. What steps can be taken to encourage, if not to compel as large a number of assessees as possible (particularly those engaged in business) to keep proper accounts, to preserve them for at least some years, and in cases where they relate to business fetching an income above a certain limit, to adopt the pratice of getting them audited by qualified auditors?

31. Do you see any objection to auditors being asked to

before completion of assessment and cases where he leaves India after the assessment has been completed but before payment.

XX BANKRUPTCY AND WINDING UP.

39. Will it not be right to enact that the claim for income tax should have priority over other debts even in liquidation and bankruptcy proceedings? If so, should any difference be made according as liquidation or bankruptcy commences after the assessment of the tax or before assessment? (5)

40 What provision would you recommend to safeguard against loss of revenue on account of a Receiver in bankruptcy or a Liquidator being discharged before assessment or payment or income tax, payable in respect of income arising during the pendency of the bankruptcy or liquidation proceedings?

XXI PENALTIES.

41. The provisions relating to the levy of penalties for failure to submit returns are sometimes complained against as leading to arbitrary exercise of power. Can any other scheme be thought of which in the event of failure to submit returns would operate automatically and not at the discretion of the Income-tax Officer? For example, can it be provided that persons who have not submitted their returns shall not be entitled to claim statutory deductions of certain kinds?

42. The penalty provisions of the Income tax Act as they stand hit only cases where incorrect statement in the return has been deliberately so made. Will it not be right do insist on a stricter standard in respect of the liability of assessees to discharge their statutory duty of submitting correct returns?

43. Will it not be right to follow the English law and declare even abetment of submission of incorrect returns to be an offence?

44. What do you think should be the policy of the Government in cases in which it is satisfied that an offence under section 52 or one punishable under I.P. Code has been committed? should it ordinarily proceed to prosecute the person concerned, or perferably safeguard the revenue by levying a penalty under section 28 or compounding the offence? If the possibility of prosecution is to act as a deterent, should not the maximum penalty under section 52 be much greater than it is now? What do you think is likely to be the reaction of the public (1) if there are frequent prosecutions for income tax offences and (2) if clear cases of offences are compounded?

45. Have you any comments or suggestions to make with reference to the exercise of the power under section 28 to levy penalties?

XXII SECRECY AND PUBLICITY.

46. What do you think of the proposal that the provisions of section 54 should be relaxed so as to permit the disclosure of confidential information in the following cases.

(1) to the Advocate-General, where it appears that there has been a breach of trust relating to charity;

(2) to the Provincial Government, in respect of information having a bearing on the recovery of Sales Tax;

(3) to the proper authorities, when the assessee makes in the course of I.T. proceeding statements which implicate him in a criminal offence and when such statements have been made with a view to escape liability under the Income-tax Act.

(4) to a third person, where the assessee asserts the right of such third person to certain property or income and the Income-tax authorities have reason to believe that such assertion is not true and has been made with a view to escape or reduce liability to tax?

The first three cases are similar in nature to the exemption now recognised under sub section (3) to section 54 of the Act. The fourth case is similar to the provisions contained in section 7 (4) of the Income tax (Investigation Commission) Act. The possibility of the disclosure being made to a party who may be in a position to take advantage of the false statement made by the assessee may act as a deterrent against the assessees recklessly making such false statements.

47. Have you any suggestions to offer or remarks to make in respect of the following proposals:-

(1) that wide publicity should be given in respect of cases where assessees are, after enquiry found to have made gross under statements of their income.

(2) that similar publicity should be given to gross instances of cases in which persons have been convicted of income tax offences?

XXIII APPELLATE PROCEDURE.

48. Do you think that it is necessary to provide a right of appeal (1) against an order of rectification under section 35 and (11) against an order of the Appellate Assistant Commissioner refusing to extend the time for filing an appeal on dismissing an appeal as not filed in time.

49. Can a non-resident assessee who fails to pay the demand be put on condition that he should deposit the tax before any appeal filed by him against the assessment is heard? Alternatively, can he not be asked to give security for payment in the event of the decision going against him?

50 Will it not be right to enact in the statute itself that fresh evidence can be admitted in appeal only in cases in which the same could not have been produced before the Income-tax Officer even with due diligence and attention?

What have you to say regarding a proposal that in all appeals under the Act the onus should be specifically laid upon the appealant to show that the Income-tax Officer's assessment order was wrong? This appears to be the rule in England.

51. What course would you suggest to safeguard the interest of revenue in cases in which a person who has become entitled to a refund of the tax levied from him on the reversal of an order of assessment may ultimately be held liable by higher appeallate authority, if by that time the person has either left the country or has failed in business and is no longer in a position to pay? The statute as it now stands, provides for only one possible contingency of this kind, namely when Government appeal to the Privy Council against an order of the High Court (see proviso to Sub-Section (7) of section 66)

XXIV ADMINISTRATION

(a) Income-tax Officers.

52. What have you to say to a proposal that enhanced powers should be given to Income tax Officers to enable them to gather relevant information particularly-

(i) to deal effectively with persons suspected of having black market dealings;

(ii) to enter business premises and inspect the accounts maintained therein, place identification marks thereon and make copies therefrom and if the officer has reason to think that they may not be forthcoming when required to impound them

(iii) to make a search of places where there are reasonable grounds for believing that relevant books and records have been kept and

(iv) to call for relevant information from banks and other business houses.

53. Would it not be desirable to have a provision in the statute itself specifically authorising officers of the Income-tax Department to call upon assessees to submit total wealth statements at any time they may consider it necessary?

54. Have you any suggestions to make

(i) relating to recruitment and training of Income tax Officers and distribution of work among them;

(ii) calculated to improve the relations between the public and the income tax Staff; and

(iii) to educate public opinion to the due realisation of civic responsibility in the matter of meeting the tax obligations and co-operating with the Department.

55. Can you suggest any remedies to meet complaints frequently made of unreasonable delays on the part of the Department in dealing with claims forrefunds? Do you think that there is any justification for a complaint that the provisions of Section 48 receive unduly narrow interpretation at the hands of the Department? If you think so, how do you suggest that this should be remedied?

(b) Inspecting Assistant Commissioners.

56. Is it advisable to define in the stature itself the powers and duties of Inspecting Assistant Commissioners and the Director of Inspection in view of the existing practice of their inspecting assessment records and advising Income tax Officers in matters connected with current assessments?

(c) Appeallate Assistant Commissioners.

57. What do you think of a proposal to make the following changes in the provisions relating to appeals:

(i) that the Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue and placed under the control of the Ministry of Law.

(ii) that there should be only one appeal on questions of fact to the Namely, to the Assistant Commissioner in certain classes of cases and direct from the Income-tax Officer to the Appellate Tribunal in other cases. This would correspond with the practice in the ordinary Civil Judicature.

XXV. REWARDS.

58 Is it desirable that the Income tax Department should reward informers for valuable information to the Department in respect of tax evasions? If so, what safeguards would you suggest so that the system may not be availed of by blackmailers?

59. What do you think will be the appropriate procedure to be followed when an assessment proceeding started before one Income tax Officer has to be completed before another, either because the case is transferred from one Income tax Officer to another or because one Income-tax Officer is on transfer, retriement, etc succeeded by another? Can the proceeding be continued from the stage which it has already reached, or do you think it necessary or worthwhile to have a rehearing either in all cases ar at any rate incases in which the assessee so desires?

XXVI GENERAL

60 Have you any other suggestions to make, on points not covered by the above questions by way of amendment of the Income tax Act or with reference to its administration, especially with regard to avoidance or evasion of the payment of income tax?

Finance (Budget-General) Deptt.

Letter No.44836-BG-1, dated 2-7-1948.

To

The Hon'ble the Chief Justice of the
High Court of Judicature at Madras.
(with enclosure).

Honourable Sir,

Sub:- Income-tax Investigation Commission -
Questionnaire.

- - -

I am directed to forward a copy of the letter No.Nil, dated 29-5-1948 from the Income-tax Investigation Commission and to request that the Hon'ble the Judges of the High Court will be so good as to favour the Government in the Finance Department with their views on any or all the points mentioned in the questionnaire annexed to the letter.

P.T.O.

I am to request that a reply may kindly be sent before the 20th July 1948.

Yours faithfully,

Sd X

(14)

GOVERNMENT OF MADRAS.

Finance (Budget-General) Department.

Memorandum No.44836 BG-2, dated 2-7-1948.

Sub:- Income-tax Investigation Commission - Questionnaire.

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A copy of the letter No.Nil dated 29-6-1948 from the Income-tax Investigation Commission is forwarded to

the Board of Revenue,
the Registerar of Joint Stock Companies,

with the request that its/his views on any or all the points mentioned in the Questionnaire annexed to the letter may be furnished to this Department before the 20th July 1948.

To

The Board of Revenue
the Registrar of Joint Stock Companies.

(with enclosures).

(46)

R.O.C.No.4741 of 1948 B-1.

From

P.T.Raman Nayar Esq., I.C.S.,
Registrar, High Court, Madras.

To

The Secretary to Government,
Finance Department, Fort St. George,
MADRAS.

Dated 7th July 1948.

Sir,

Sub:- Income-tax Investigation Commission - Questionnaire.

Ref:- Letter 44836-BG-1 Finance dated 2-7-1948.

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I am directed to say that the High Court as such has no remarks to offer on the points raised in the above questionnaire.

A copy of the questionnaire appears to have been sent to individual judges and the views, if any, of each Judge will be sent direct.

Sd. P.T.Raman Nayar,

REGISTRAR.

(12)

From
Sri Diwan Bahadur H.Krishnamurthi,
Registrar of Joint Stock Companies
MADRAS

To
The Secretary to Government,
Finance Department,
Fort St. George, MADRAS.

No.C.2609/48 dated 20-7-1948.

Sir,

Sub:- Income tax - Investigation Commission.
Questionnaire.
Ref:-Memo.No.44836-B&-2, Finance dated 2-7-1948.

My remarks are confined to questions Nos.6 to 11 relating to Companies, Firms and Mutual Associations.

Question 6 Income accruing in British India, without consideration of foreign income or losses may be taxed.

Question 7 There is the advantage of continuity of business in the case of a limited company, while a firm can be easily dissolved. It is perhaps for this reason that Corporation Tax at a flat rate is levied on companies. The provision for a graduated super tax on companies may be imposing greater burden on businessmen.

Question 8 Private companies are incorporated bodies and any change in their status for purposes of income tax does not appear to be desirable .

P.T.O.

Question 9. There does not appear to be any need for interrfering with the formation of private companies. Corporation tax levied on companies is paid by the companies and not by shareholders. It is not, therefore, refundable. This is sufficient distinction between taxation of firms and taxation of companies. Any provision similar to the provisions in the Excess Profits Tax Act to check evasion of tax may be introduced in the Income tax Act.

Question 10 It seems to be desirable to make a provision in the Income tax Act for the compulsory registration of all firms with the Registrar of Firms with a view to remove unnecessary enquiries regarding their genuineness.

Question 11 There appears to be no need to grant any special exemption to Mutual Associations. The profits which they earn may be taxed just like those of other concerns, individuals or firms. All Mutual Associations registered under the Indian Companies Act, 1913 other than companies carrying on insurance business for which separate methods of assessment have been provided in the Income tax Act, may be assessed on their profits.

Sd X

FOR REGISTRAR.

GOVERNMENT OF MADRAS.

Finance (Budget-General) Department.

Memorandum No.44836-BG-4, dated 21-7-1948.

Sub:-Incometax Investigation Commission - Questionnaire.

Ref:-Memorandum No.44836 BG-2, dated 2-7-1948.

The Board of Revenue is requested to send immediately its reply to the Memorandum cited as the reply to the Income tax Investigation Commission should reach the Commission before 31st July 1948.

To

The Board of Revenue,
MADRAS.

R E V E N U E D E P A R T M E N T.

Subject:

ACTS AND RULES - Income Tax Investigation Commission - Questionnaire relating to amendments to the Indian Income Tax Act, 1922 and the Excess Profits Tax Act 1940 - Remarks Submitted.

Station: Madras.

Res.Mis.1022 Dated 25th July 1948.

From

P.M.Jayarajan Esq., Bar-at-law, I.C.S.,
Secretary, Board of Revenue.

S.Ranganathan Esq., O.B.E., I.C.S.,
Commissioner of Land Revenue and Commercial Taxes.

V.N.Kudva, Esq., C.I.E., I.C.S.,
Commissioner of Land Revenue. Excise and Prohibition.

V.S.Hejamadi Esq., I.C.S.,
Commissioner of Civil Supplies and Separate Revenue.

***

Read:- Government Memo.No.44836-B.G.2.Finance, dated 2-7-1948.

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RESOLUTION

The Board submits the following remarks on the points raised in the questionnaire contained in the letter No.Nil dated 29-5-1948 from the Income-Tax Investigation Commission forwarded with the Government Memo cited above.

Point (1) The Board considers that it is necessary and justifiable to retain in the statute the special group of provisions relating to the category described as "Not ordinarily resident" as otherwise the tax due on income of a person residing outside the territory of the Indian Union but doing business within the territory of the Indian Union will be lost to the Government.

Point (2) The Board considers that the second course suggested in the question is a fairer one.

Point (3) The Board is of the opinion that a part from whatever steps the department may employ to detect such cases the only possible methods to improve the means available to the Income tax department for ascertaining the total income in the case of non-residents are (1) to bring in legislation making it incumbet upon the residents to declare that they trade on behalf of the non-residents and to furnish the results periodically of such trade and (2) to check at the centre all such declarations.

Point(4) The Board considers that it will be always convenient to make one person responsible for the payment of income tax. One resident agent may not have enough to retain in certain cases only. Mostly the principal agent in charge of the largest share of business will presumably be pitched upon. The Board thinks that the department may be given the discretion to select one or more agents and prescribe also the amount to be retained by each.

Points 5 and 6: No remarks.

Point (7): The Board considers that it is necessary to levy the super tax in a graded scale instead of the flat rate which is not subject to any minimum and that the shareholder will have to be given the same treatment with reference to supertax as he receives with reference to Income tax under Section 49(b).

Point 8 No remarks

Point (9) The Board thinks that the incorporation of provisions in the Income Tax Act, 1922 similar to Sections 10 and 10 A of the Excess Profits Tax Act, 1940 will check the practices referred to by the Investigation Commission.

Point (10) The Board considers that compulsory registration is desirable.

Points 11 and 12 No remarks.

Point (13) The Board thinks that for deducting supertax the Companies must first of all know that the non-resident shareholders get an income from other concerns which would exceed the maximum amount not chargeable to supertax. The idea is, in its view, to presume that all non-resident shareholders are liable to supertax and levy a kind of compounding rate on the dividend drawn by them as it will not be possible to ascertain definitely the rate of supertax leviable for each such shareholder. The Board considers that about half the rate on the highest slab may be adapted and it supposes that the shareholders will get a refund if the super tax is not leviable.

Point (14) The Board thinks that there is no need for differentiation.

Point 15 The Board sees no objection to the suggestion. It considers that private limited companies and associations need not get the benefit of the allowance which is denied to firms under Section 10(4)(b) of the Income tax Act 1922.

Point 16 The Board has no objection

Point 17 The Board considers that the amendment proposed is reasonable.

Point 18 The Board observes that there is no doubt that the bulk of the assessees are inclined to exaggerate the expenditure on maintenance of motor cars etc to obtain as much relief as possible but considers that Income Tax Officers should accept the figures when they are not unreasonable and are proved by vouchers. Moneys spent in the nature of advertisements and on entertainments etc., to customers to ensure or attract their patronage should be accepted as expenses.

Point 19: The Board considers that a suitable penalty as for evasion may help to checkmate such attempts.

Point 20 The Board considers that the proposal is acceptable.

Point 21 The Board thinks that only proportionate deduction need be made in the cases in question.

Point 22 The Board considers that there is no harm in letting the Central Board of Revenue to regulate the methods of stock valuation to arrive at profits for the purpose of taxation.

Point 23 The Board considers that it is desirable to make a general provision in the Act for dealing with income derived by a mortgagee in possession of agricultural land. The rules will have to provide for dealing with the varieties of arrangements that prevail. The Agricultural Income Tax Acts of the various provinces where such a tax has been introduced will contain suggestions for arriving at the assessable income from land.

Point 24 The Board considers that premia on leases should be treated as taxable income.

Point 25 The Board sees no objection to the proposal

Point 26 The Board considers that the proposal is not objectionable.

Point 27 The Board considers that the proposal is not objectionable.

Point 28 The Board considers that it will not be practicable to insist on a sworn statement from everybody making a declaration and that the present system viz to leave it to the Income tax Department to call for returns from all persons who in their opinion are liable to pay the tax will have to continue.

Point 29 The Board considers that ther is no objection to the proposal but that omission should not be mad penal except in the case of assessees and those who have an assessable income

Point 30 No suggestions. When evasion is easier and more profitable compulsion is the only course.

Point 31 The Board sees no objection to the proposal.

Point 32 The Board considers that nothing can be said in general and each case has to be decided on merits.

Point 33 The Board considers that it can beensured that a non-resident broker is a genuine broker and not an alias for the foreign merchant by making him give a declaration and providing a penalty for a false declaration.

Point 34 No remarks.

Point 35 The Board considers that the proposal will be a great hardship on a bonafide purchaser for value who wil be left to an action in equity or common law against the transferrer who may be penurious and that if he was not penurious the Income tax department will not have to follow the property. It accordingly opposes the suggestion.

(25)

Point 36 No remarks

Point 37 The Board considers that the only method is to withdraw the exemption for such benefits but that it may be a hardship to genuine cases.

Point 38 No safeguards are possible.

Point 39 The Board considers that income tax should have priority over other debts even in liquidation and bankruptcy proceedings and that no difference need be made between cases of liquidation or bankruptcy commencing after the assessment of the tax or before it.

Point 40 No remarks

Point 41 The Board considers that it is better to have an arbitrary exercise of power with provision for appeal to higher authorities as at present than to provide for automatic penalties.

Point 42 The Board considers that it will not be easy to define the standard of strictness.

Point 43 The Board has no information as to what extent such abetment is prevalent. It considers that if there is a great deal of loss of revenue as a result of such abetment, it should be made an offence.

Point 44 The Board considers that in general a few prosecutions for clear and flagrant cases is preferable. Too frequent prosecutions may not be feasible. Penalty and compounding of the offences may be adquate for most cases. But clear cases of offences should not be compounded. The public do not ordinarily bother about these & these taxation prosecution but to many prosecutions may not be liked by the general public.

Point 45 The Board considers that each case will have to be decided separately and the amount to be levied as penalty will depend on the gravity of the offence.

Point 46 The Board considers that the provisions of Section 54 can be relaxed in the first three cases mentioned by the Commission. With regard to the fourth there is no need for the Government to take the initiative and increase the disputes between private parties. If there is any doubt about the statement made by the assessee, an enquiry can be conducted.

Point 47 The Board considers that giving wide publicity in respect of cases where assessees were found to have made gross understatements of their income will have a good effect.

Point 48 The Board considers that a right of appeal is desirable.

Point 49 The Board considers that the proposals are acceptable and that the non-resident assessee should either pay he tax or he should be asked to give security for the amount.

Point 50 The Board considers that the proposal is reasonable and that the onus should be on the assessee to show that the assessment made by the Income Tax Officer is wrong.

Point 51. The Board considers that necessary security can be taken in the cases in question but that such circumstances will be very rare. Where it is definitely known that the appeallate authority will restore the assessment, all safeguards can be taken.

Point 52 to 57 The Board considers that the provisions are generally acceptable.

Point 58 The Board considers that if the information given is really useful, there can be no objection to reward the informants If the information given is correct the question of blackmailers does not arise.

Sd X

FOR SECRETARY.

To

The Secretary to Government, Finance Department.

(28) Finance (Bud.General) Department.

Letter No.44836-BG-(6). dated 29-7-1948.

To

The Secretary,
Income tax Investigation Commission,
NEW DELHI.

Sir,

Sub:- Income Tax Investigation Commission - Questionnaire.

Ref:- Your letter, dated 29th May 1948.

I am to enclose herewith the view of the Board of Revenue, Madras, on the several points mentioned in the Questionnaire of the Commission and the views of the Registrar of Joint Stock Companies on questions Nos.6 to 11 relating to Companies, Firms and Mutual Associations. The High Court, which was also consulted, has stated that a copy of the questionnaire appears to have been received by individual Judges and that the views, if any, of each Judge will be sent direct to the Commission. The High Court as such has no remarks to offer.

P.T.O.

I am to add that the Provincial Government have no special remarks to offer on the points mentioned inthe ~~a~~ questionnaire.

Yours faithfully,

Sd X

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The papers may be -

G.O.Ms.No.772, Finance, dated 6-8-1948.

Recorded.

Abstract.

Income-Tax - Questionnaire of the Income-Tax - Investigation Commission - Replied to - Papers Recorded.

/True Copy/

Supdt. 13/8/53

Madras Record Office.